

**COLLECTIVE BARGAINING AGREEMENT**

**between**

**UNITED STATES DEPARTMENT OF AGRICULTURE (USDA), NATURAL RESOURCES  
CONSERVATION SERVICE (NRCS), PUERTO RICO**



**and the**

**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES (AFGE), LOCAL 0055**



Effective

March 4, 2022

Contents

ARTICLE 1 – PARTIES TO THE AGREEMENT, RECOGNITION, DEFINITION OF BARGAINING UNIT, AND COVERAGE OF THE AGREEMENT ----- 7

ARTICLE 2 – GOVERNING LAWS AND REGULATIONS ----- 8

ARTICLE 3 - UNION AND MANAGEMENT RIGHTS ----- 9

ARTICLE 4 – EMPLOYEE RIGHTS ----- 13

ARTICLE 5 – NEGOTIATIONS DURING THE TERM OF THE AGREEMENT ----- 16

ARTICLE 6 – EFFECTIVE DATE, DURATION AND DISTRIBUTION OF AGREEMENT ----- 18

ARTICLE 7 - GRIEVANCE PROCEDURE ----- 19

ARTICLE 8 – ARBITRATION ----- 23

ARTICLE 9 OFFICIAL TIME ----- 25

ARTICLE 10 – UNION SPACE AND GOVERNMENT EQUIPMEN ----- 29

ARTICLE 11 – DUES WITHHOLDING UNDER 5 U.S.C. § 7115 ----- 30

ARTICLE 12 – TRAVEL ----- 31

ARTICLE 13 – MERIT PROMOTION ----- 32

ARTICLE 14 – HOURS OF DUTY ----- 33

ARTICLE 15. PARKING AND PARKING AREA ----- 34

ARTICLE 16- TIME and LEAVE ----- 35

ARTICLE 17 – TELEWORK ----- 36

ARTICLE 18 – INCLEMENT WEATHER ----- 37

ARTICLE 19 – PERFORMANCE MANAGEMENT ----- 38

ARTICLE 20 – POSITION DESCRIPTIONS AND CLASSIFICATION ----- 39

ARTICLE 21 – EMPLOYEE AWARDS AND RECOGNITION ----- 40

ARTICLE 22 – PREMIUM PAY AND CREDIT HOURS ----- 41

ARTICLE 23 – ALTERNATIVE DISPUTE RESOLUTION ----- 43

ARTICLE 24 – REDUCTION-IN-FORCE AND TRANSFER OF FUNCTION ----- 44

ARTICLE 25 – FURLOUGHS ----- 45

ARTICLE 26 – DISCIPLINARY AND ADVERSE ACTIONS ----- 47

ARTICLE 27 – REASSIGNMENTS ----- 50

ARTICLE 28 – CONTRACTING OUT BARGAINING UNIT WORK ----- 51

ARTICLE 29 – EQUAL EMPLOYMENT OPPORTUNITY ----- 52

ARTICLE 30 – HEALTH AND SAFETY ----- 53

ARTICLE 31- SMOKING POLICY ----- 54

ARTICLE 32 – EMPLOYEE ATTIRE ----- 55

ARTICLE 33 – UNION-EMPLOYER MEETINGS ----- 56

---

*PREAMBLE*

---

The accomplishment of the mission of Natural Resources Conservation Service, Puerto Rico (Agency) is paramount. In fulfilling its mission, the Agency is committed to continuing to treat all employees fairly and equitably. The Agency encourages the participation of the American Federation of Government Employees Local 0055 (Union), as exclusive representative of bargaining unit employees, in the formulation and implementation of personnel policies affecting members of the bargaining unit. The parties recognize that it is in the best interest of all parties, i.e., the Agency, the Union and the employees, to conduct themselves in a professional and businesslike manner, characterized by mutual courtesy, in their day-to-day working relationships in carrying out labor/management activities.

This agreement is made pursuant to the policy set forth by the Civil Service Reform Act of 1978 regarding federal labor-management relations. The following articles of this basic agreement, together with any and all supplemental agreements which may be agreed to at later dates, constitute a total agreement by and between the Agency and the Union.

By entering into this Agreement, both parties agree to work towards the creation of a work environment in which everyone treats all others with respect, consideration and dignity. In an atmosphere of mutual respect and trust, all parties shall be treated fairly and equitably in the administration of personnel policies, practices, procedures and matters affecting conditions of employment with proper regards for their privacy and constitutional rights.

---

## *DEFINITIONS*

---

- A. **ADVERSE ACTION:** A personnel action which affects an employee through: removal, suspension; reduction-in-grade or pay; or furlough without pay for 30 days or less. Such actions may be appealable to the Merit System Protection Board or through the negotiated grievance procedure (depending on scope) at the employee's choice, but not both (5 U.S.C. Chapter 71 § 7121 (d)). It does not include removal of a probationary employee; a suspension or removal for national security reasons; a reduction in grade or a removal for unacceptable performance; or an action by the Special Counsel of the Merit System Protection Board (MSPB).
- B. **AGENCY:** United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) – Puerto Rico, also known as “Management”
- C. **AMENDMENTS:** Modifications to the basic Agreement to delete or change portions, sections, or articles of the Agreement.
- D. **AUTHORITY:** The Federal Service Labor Relations Authority (FLRA) as established by the Civil Service Reform Act of 1978, Labor Management Statute 5 U.S.C. Chapter 71.
- E. **BUSINESS ATTIRE:** Appropriate business attire for men may include but is not limited to: Formal suits, ties, business shirts, sport coat with dress pants and dress shoes. Appropriate business attire for women may include but is not limited to: Skirt suits or pant suits with formal business blouses or tops and dress shoes.
- F. **BUSINESS CASUAL ATTIRE:** Appropriate business casual attire may include, but is not limited to: Slacks or khakis, trouser-like jeans, dress shirt or blouse, open-collar or polo shirt, optional tie or sport coat, dress or skirt, blazer, knit shirt or sweater, and loafers or dress shoes/sandals.
- G. **CASUAL ATTIRE:** Appropriate casual attire may include, but is not limited to: Jeans (tattered, ripped or cut-offs must not be worn), leggings or other casual pants, casual shirts and casual shoes, including running or sport-style shoes and sandals are permitted provided they are in good condition and appropriate for the work setting.
- H. **COLLECTIVE BARGAINING:** The performance of the mutual obligation of the Agency Representative and Exclusive Representative of the employees to meet at reasonable times and consult and bargain in good faith to reach an agreement with respect to the conditions of employment affecting such employees. The representatives are obligated to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but obligation referred to in this paragraph does not compel either party to agree to a proposal or to make concession.
- I. **CONDITIONS OF EMPLOYMENT:** means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters, relating to political activities prohibited under subchapter III of chapter 73 of this title; relating to the classification of any position; or to the extent such matters are specifically provided for by Federal statute.
- J. **CONFIDENTIAL EMPLOYEE:** An employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations.

- K. CREDIT HOURS: Those hours within a Flexible Work Schedule that an employee elects to work in excess of his or her basic work requirement so as to vary the length of their workweek or workday.
- L. DAYS: Calendar days, unless otherwise noted.
- M. DE MINIMIS: Trivial or minor changes to conditions of employment.
- N. DISCIPLINARY ACTIONS: Management-initiated actions designed to correct employee behavior. Disciplinary Actions may include written reprimands and suspensions of 14 days or less. Disciplinary Actions are less severe than Adverse Actions and are grievable through the negotiated grievance procedure.
- O. EMPLOYEES: Employees of the Bargaining Unit as described in Article I “Parties to the Agreement, Recognition, Definition of Bargaining Unit and Coverage of the Agreement.”
- P. FORMAL DISCUSSION: Under 5 U.S.C. Chapter 71, § 7114(a)(2)(A), a discussion between an agency representative(s) and bargaining unit employee(s) concerning any grievance or any personnel policy or practice or other condition of employment which affects bargaining unit employees. The exclusive representative must be given the opportunity to be represented at these meetings.
- Q. FORMAL DISCIPLINE: Official letter of reprimand, suspension from duty without pay, involuntary reduction in grade or pay for cause, and removal from federal service.
- R. FURLOUGH: A placing of an employee in a temporary non-duty, non-pay status because of lack of work or funds or other non-disciplinary reasons. Two types of furloughs are “save money” furloughs and “emergency/shutdown” furloughs.
- S. GRIEVANCE: A request for relief in a matter of concern or dissatisfaction: 1) by any employee concerning any matter relating to the conditions of employment of the employee; 2) by the Union concerning any matter relating to the conditions of employment of any employee; or, 3) by any employee, labor organization, or Agency concerning: (i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or (ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.
- T. IMPASSE: The inability of the representatives of the Agency and the Union to arrive at a mutually agreeable decision, concerning negotiable matters, through the bargaining process.
- U. NON-DISCIPLINARY CORRECTIVE ACTIONS: Intended to correct inappropriate behavior or conduct; motivate employees to conform to acceptable standards of conduct, laws, rules, regulations, instructions, orders or requirements; and to preclude future infractions. These actions will not be included in the employee’s electronic Official Personnel File. Corrective actions include the following:
1. Oral counseling: A discussion between the supervisor and employee to induce proper behavior and/or conduct.

2. Written counseling: A written document from the supervisor to the employee to induce proper behavior and/or conduct. There is no requirement for an oral counseling to occur before a written counseling is issued. Examples of written counseling include, but are not limited to: Letter of Warning or Letter of Instruction.

U. MANAGEMENT OFFICIAL: An individual employed by the Agency in a position where the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the Agency.

V. NEGOTIABILITY DISPUTE: A dispute over whether or not an issue is negotiable within the scope of bargaining established in Title VII of the Civil Service Reform Act of 1978. Compelling disputes are resolved by the FLRA. Regulations of the Authority provide specific procedures for processing such disputes 5 U.S.C. Chapter 71, § 7117.

W. NEGOTIATION: Bargaining of representatives of the Agency and Union over appropriate issues relating to terms of conditions of employment, personnel policies and practices, with a view toward arriving at a formal agreement.

X. PROFESSIONAL EMPLOYEE - Professional work requires knowledge in a field of science or learning characteristically acquired through education or training equivalent to a bachelor's or higher degree with a major study in or pertinent to the specialized field, as distinguished from general education. The titles of professional positions usually reflect the field concerned; e.g., engineer or architect.

Y. SENIORITY: A ranking of bargaining unit employees based on each employee's service computation date for leave.

Z. SUPERVISOR: An individual employed by an Agency having authority in the interest of the Agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment.

AA. SUPPLEMENTS: Additional articles negotiated during the term of the basic Agreement.

BB. UNION: American Federation of Government Employees (AFGE), Local 0055.

CC. UNION OFFICIAL: Duly elected or appointed officials of AFGE, Local 0055.

DD. UNION OFFICER: An elected official of the Union, e.g., President, Vice-President, Secretary, Treasurer.

EE. UNION REPRESENTATIVE: Accredited National Representative of the American Federation of Government Employees.

FF. UNFAIR LABOR PRACTICE (ULP) CHARGE: A charge filed by Union or Agency with the appropriate Regional FLRA Office citing the subsections of 5 U.S.C. Chapter 71, § Section 7116 which have been violated, naming the party in violation, and specifically outlining the facts which form the basis for the charge. Filing must be done within six months of the incident(s)-giving rise to the charge. Taking this step starts the unfair labor practice procedure. A copy of

the charge must be served to the Agency or Union alleged to have violated Title VII of the Civil Service Reform Act of 1978.

GG. CIRCULAR A-76: The Federal Activities Inventory Reform (FAIR) Act and Office of Management and Budget (OMB) Circular A-76 require agencies to prepare inventories of the commercial and inherently governmental activities performed by Federal employees. One of the main components of the inventory is to classify Federal positions as inherently governmental or commercial in nature.

## ARTICLE 1 – PARTIES TO THE AGREEMENT, RECOGNITION, DEFINITION OF BARGAINING UNIT, AND COVERAGE OF THE AGREEMENT

1.1 PARTIES TO THE AGREEMENT: The parties to this Agreement are the NRCS, Puerto Rico of the United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), hereinafter known as the “Agency or Management”, and the American Federation of Government Employees (AFGE) 0055, hereinafter known as the “Union”.

1.2 UNIT OF RECOGNITION: The unit of recognition covered by this Agreement is that unit certified by the Federal Labor Relations Authority (FLRA) in Case No. AT-RP-80016 approved on May 29, 1998. The Employer recognizes AFGE Local 0055 as the exclusive representative of all employees [hereinafter sometimes referred to as "employees" or "bargaining unit employee(s)"] in the bargaining unit as defined below.

1.3 BARGAINING UNIT: This Agreement applies to all members of that unit named in the, Case No. AT-RP-80016 approved on May 29, 1998, as described therein as follows:

- A. All professional and non-professional employees. This Agreement does not cover management officials, supervisors, confidential employees, employees engaged in federal personnel work in other than a purely clerical capacity, and employees described in Title 5, United States Code, Section 7112 (b) (6) and (7).
- B. In addition, the following groups of employees are excluded: student trainees, temporary and probationary employees, and Student Career Employment program students. If a temporary appointment goes beyond 1 (one) year of consecutive service in their current appointment, they will be covered by the terms of this agreement.

1.4 COVERAGE OF THE AGREEMENT: This Agreement covers only those positions described in the bargaining unit.

- A. The Parties further agree that should AFGE request certification to include subsequently organized groups of employees in the unit, the Parties will meet and discuss the proposed petition, if necessary. Either Party may request involvement by the FLRA. Unresolved issues will be addressed by the FLRA in accordance with law and regulation.



## ARTICLE 2 – GOVERNING LAWS AND REGULATIONS

### 2.1 RELATIONSHIP TO LAWS, GOVERNMENT-WIDE RULES AND REGULATIONS:

- A. In the administration of all matters covered by this Agreement, the parties shall be governed by Federal laws and Government-wide rules, regulations and policies, as defined in 5 USC 71, and by subsequently enacted rules, regulations, policies and Executive Order that do not conflict with this Agreement.
- B. Should future changes in law or regulations conflict with any portion of this Agreement the Provisions of this Agreement shall prevail and shall not be changed except pursuant to 5 USC 71.
- C. The Agency will comply, and may require employees to comply, with Agency rules, regulations, policies, procedures, or practices, as amended, to the extent they do not conflict with this Agreement, or any supplement or amendment.
  
- D. The Parties do not waive any collective rights by agreeing to this section.

2.2 PREVIOUS AGREEMENTS AND PAST PRACTICES: Upon approval, this Agreement will supersede and cancel all previous formal and informal labor agreements, including any past practices, and will serve as the sole Agreement between the parties.

## ARTICLE 3 - UNION AND MANAGEMENT RIGHTS

### GENERAL:

In matters relating to personnel policies, practices and other conditions of employment, the parties shall have due regard for the responsibilities and obligations imposed by 5 U.S.C. Chapter 71, this Agreement, and supplements thereto.

Management and the Union shall conduct themselves in a professional and businesslike manner, characterized by a mutual courtesy in their day-to-day working relationship.

3.1 RESTRAINT: The Agency shall not restrain, interfere with or coerce any Union official or representative in the exercise of their rights under 5 U.S.C. Chapter 71, § 7102 because of the performance of duties within the scope of this Agreement, or against any bargaining unit member for filing a grievance/complaint, or acting as a witness under this Agreement, the Law, or applicable regulations.

### 3.2 REPRESENTATION:

- A. The Union is the exclusive representative of the bargaining unit and is entitled to act on behalf of bargaining unit employees. The Union is responsible for representing the interests of all employees in the bargaining unit without discrimination and without regard to Union membership.
- B. Designated officers or representatives of the Union have the right to represent the employees within the entire bargaining unit in accordance with the provisions of Article 9, "Union Representation and Official Time" of this Agreement. The Agency shall recognize representatives designated by the Union.
- C. The Union shall provide the Agency current listings of officers and stewards, identifying the Union office each holds.
- D. The Agency shall permit officials or other representatives designated by the Union, including persons not employed by the Agency, to enter and visit the Agency's premises at any time during normal working hours following adequate advance notice (normally two day notice) in order to represent employees, inspect physical structures, evaluate programs and perform other similar representational tasks. To the extent reasonably possible, the Union shall coordinate these visits with the Agency at the premises where the visit is to occur. Once the Union provides the Agency a current listing that shows an individual as an officer and/or steward, that individual shall not be required to provide advanced notice of a visit in order to attend a meeting called by the Agency or required by this agreement or the law.

Note: individual access of former or non-federal employees is contingent upon the individual acquiring, possessing and maintaining proper security credentials. Should such individuals become a security threat, as determined by management will notify the Union as soon as practical that they will no longer have access to government premises.

### 3.3 UNION RIGHTS AND RESPONSIBILITIES:

- A. The Union has the right to represent an employee or group of employees in presenting a grievance or when raising matters of concern or dissatisfaction with the Agency.
- B. The Union has the exclusive right to represent employees under Article 7, "Grievance Procedure" in this Agreement and any other appeals process established as a result of bargaining.
- C. An employee or group of employees in the unit may present such grievances to the agency and have them adjusted, without the intervention of the exclusive representative, as long as the adjustment is not inconsistent with the terms of the agreement and the exclusive representative has been given opportunity to be present at the adjustment.
- D. The Union will be a party to all formal discussions and grievance/complaint proceedings involving conditions of employment in the bargaining unit.

### 3.4 FORMAL DISCUSSIONS:

- A. Consistent with 5 U.S.C. Chapter 71, § 7114(a)(2)(A), the Agency will give the Union, as the exclusive representative of bargaining unit employees, an opportunity to be represented at any formal discussion between one or more representatives of the Agency and one or more employees in the bargaining unit or their representatives concerning any grievance or any personnel policy or practices or other general conditions of employment.
- B. Please note these are examples where the FLRA has found that the following meetings did not constitute formal discussions:
  - 1. Routine, periodic counseling meetings between employees and their first-line supervisors, with no other management personnel present, regarding the employee's job performance.
  - 2. A meeting between a new employee and his supervisor at the supervisor's desk to introduce co-workers.
  - 3. A mandatory meeting to distribute information regarding a management survey concerning organizational and staffing requirements, conducted solely by first-level supervisor with no agenda.
  - 4. A meeting by the first-line supervisor, to solicit volunteers for overtime assignments; attended by only 1 supervisor, held on the shop floor, lasted 10 minutes, no prepared agenda were taken of the meeting.
  - 5. A meeting by the first-line supervisor, with five (5) or six (6) unit employees to announce a change in sick leave policy held in the supervisor's office. held in the supervisor's office advance; and lasted no more than 10 minutes.
  - 6. A meeting to discuss changes in the work process; not scheduled in advance; held at the employees' desks.

- C. The Agency will give the Union such opportunity to be present by delivering to its President or designee written 24-hour advance notice of the formal discussion. At a minimum, the notice shall identify the expected: (a) date and time of the meeting; (b) facility and room in which the meeting shall be held; (c) employee(s) with whom the meeting is to be held; (d) agency representative(s) who will attend; and (e) general subject of the meeting. In each case, whether written advance notice of a formal discussion was reasonable depends on the specific circumstances of that case.
  
- D. The Agency will also approve, on request, reasonable official time for the Union's President or designee to attend the formal discussion. Exceptions: If the President is FSA or RD they are not authorized official time to attend a NRCS Formal discussion.

3.5 WORKING RELATIONS: The parties, especially Union representatives and first-line supervisors, are encouraged to meet informally as necessary to discuss and attempt to resolve matters of concern.

3.6 NOTIFICATION OF CHANGES IN CONDITIONS OF EMPLOYMENT: The parties recognize that changes may occur in the workplace on a regular basis. Whenever either party decides to change a matter affecting conditions of employment subject to bargaining under 5 U.S.C. Chapter 71, and applicable FLRA Case Law, it will give the other party notice as required by Article 5, "Negotiations During the Term of the Agreement" of this Agreement.

- A. Correspondence to the Union will include the President, Vice-President or President's designee.

3.7 NOTIFICATION TO EMPLOYEES OF EXCLUSIVE REPRESENTATION: The Union will provide a general notice to employees of the exclusive recognition granted to the Union.

3.8 COMMUNICATIONS WITH BARGAINING UNIT EMPLOYEES: Consistent with 5 U.S.C. Chapter 71, § 7114(a)(1) the Agency will not communicate directly with employees regarding conditions of employment in a manner which bypasses the Union. However, to gauge the efficiency and effectiveness of its operations, the Agency may question employees directly, by survey, poll or questionnaire, provided that it does not do so in a way that amounts to attempting to negotiate directly with them concerning matters that are properly bargainable with their exclusive representative. The Agency will notify the Union prior to question employees directly by survey, poll or questionnaire as practical.

3.9 MANAGEMENT RIGHTS – GENERAL: Subject to the obligation to bargain established by 5 U.S.C. Chapter 71, § 7106, nothing in this Agreement shall affect the authority of the Agency:

- A. To determine the mission, budget, organization, number of employees, and internal security practices.
- B. In accordance with applicable laws:
  - 1. To hire, assign, direct, layoff, and retain employees, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
  - 2. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which the Agency’s operations shall be conducted;
  - 3. With respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion or from any other appropriate source, and
  - 4. To take whatever actions may be necessary to carry out the Agency mission during emergencies.
- C. Nothing in this section shall preclude any agency and any labor organization from negotiating:
  - 1. At the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work.
  - 2. Procedures which management officials of the agency will observe in exercising any authority under this section; or
  - 3. Appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

3.10 OTHER AGREEMENTS: The provisions of this article will apply to all supplemental, implementing, or subsidiary agreements between the Agency and the Union.

3.11 MANAGEMENT RIGHTS WITH RESPECT TO NON-BARGAINING UNIT EMPLOYEES: The Agency reserves its statutory rights with regard to all matters affecting employees and positions outside the bargaining unit.

## ARTICLE 4 – EMPLOYEE RIGHTS

### 4.1 ORGANIZATIONAL RIGHTS:

- A. Each employee in the bargaining unit shall have the right to form, join, or assist any labor organization, or to refrain from such activity, freely and without fear of penalty or reprisal; and each employee shall be protected in the exercise of such right.
- B. Except as otherwise provided under 5 U.S.C. Chapter 71, § 7102, bargaining unit employees have the right:
  - 1. To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and
  - 2. To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under 5 U.S.C. Chapter 71, § 7102.

### 4.2 PERSONAL RIGHTS: There shall be no restraint, interference with or coercion against any bargaining unit member in the exercise of their rights under 5 U.S.C. Chapter 71, § 7102.

- A. The Agency and the Union shall annually inform bargaining unit employees of their rights under 5 U.S.C. Chapter 71, § 7114(a)(2)(B), including but not limited to posting a notice on NRCS, Puerto Rico official bulletin boards.
- B. This agreement shall not prevent any employee, regardless of Union membership, from bringing any matter of personal concern to the attention of appropriate officials in accordance with applicable laws, regulations, or Agency policies, or from choosing his or her own representative in a statutory appeal action.
- C. Nothing in this agreement shall cancel or annul any employee right or require an employee to become or to remain a member of a labor organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions.
- D. An employee shall not be disciplined or otherwise discriminated against because he or she has filed a complaint or given testimony under the Civil Service Reform Act of 1978, the negotiated grievance procedure, or any other procedure available to redress complaints.
- E. The parties agree that, to the extent possible, instructions, directives and orders communicated to employees by the Agency officials should be reasonably consistent. An employee who does not understand an instruction, directive or order has the right to request clarification of that communication. A supervisor's instruction, directive or order must be complied with once given, whether or not the employee believes those instructions to be consistent, fair or reasonable. The employee must obey first and grieve later. An employee who concludes that a supervisor's instruction, directive or order is not consistent, fair or reasonable has the right to pursue their dissatisfaction through the negotiated grievance procedure.

#### 4.3 RIGHT TO UNION REPRESENTATION:

- A. If an employee wishes to discuss a problem or potential grievance with a Union representative, the employee will have the right to contact the Union representative on duty time, so long as the employee's exercise of this right does not interfere with the normal operations of the office. If the employee needs to use the telephone or e-mail for more than fifteen (15) minutes, the employee must first consult with their immediate supervisor.
- B. If the Union Representative is located outside the employee's duty station and a personal contact is needed, the employee and supervisor will agree on the appropriate time and date to meet with the Union Representative. The appropriate procedure to be used in such instances is covered in Article 9, "Union Representation and Official Time" of this Agreement.
- C. The Union shall be given the opportunity to be present at any Agency examination of a bargaining unit employee in connection with an investigation if:
  - 1. The employee reasonably believes that the examination may result in disciplinary action against the employee; and
  - 2. The employee requests representation.
- D. When an employee exercises this right and a representative of the Union is not immediately available, it will be delayed for a reasonable period of time, normally not to exceed 48 hours, but can be decreased or increased based on the circumstances, to permit the presence of a Union representative.
- E. The right to Union representation is not intended to interfere with the routine interaction between supervisors and employees in the normal course of a workday.

#### 4.4 NURSING MOTHER

The Agency shall provide nursing mothers with a reasonable break time to express breast milk whenever needed throughout the workday. The frequency and length of such breaks may vary depending on the needs of the nursing mother, e.g., the time required to express milk. If extra time is needed, an option may be for time to be made up before or after work, through Telework arrangements, or by using other work schedule flexibilities. If the Department issues guidance under which the Employer is authorized to permit nursing mothers additional paid time to express milk, the Employer shall notify the Union and give it an opportunity to bargain about the subject.

No adverse action or recourse will be based on an employee's desire to breastfeed. For further guidance regarding Breastfeeding see the USDA Nursing Mothers Support Program Handbook. Nursing mothers may submit written requests to their immediate supervisors or designees to be permitted time to express and save milk in a private place other than a bathroom (i.e., space shielded from view and free from intrusion by coworkers and the public) while at the workplace.

Such requests shall be submitted sufficiently far in advance as to allow time for the supervisor/designee to make the arrangements, and shall specify:

- a. Duration of the request;
- b. Any arrangements which the employee will make to store and remove saved milk (i.e., cooler, pick-up arrangements, container types, etc.) to ensure consistency with workplace policies;
- c. Type of time employee is requesting if the time requested exceeds the employee's unpaid lunch period and paid breaks; and
- d. The schedule of times during the employee's tour of duty for which the employee is requesting to be permitted time to express milk.



## ARTICLE 5 – NEGOTIATIONS DURING THE TERM OF THE AGREEMENT

### 5.1 MID-TERM BARGAINING:

#### A. Rights and Obligations of the Parties.

With the exception of changes mandated by law, rule, regulation; or changes flowing from the introduction of new technology; all matters covered by this Agreement will not be subject to change during the term of the agreement, absent mutual consent of the Parties. When because of mandated changes or the introduction of new technology, there is a need to reopen existing articles or add new articles, the procedures in this article will be followed. The procedures in this article will also be used when there is a change in conditions of employment (non-mandated changes) that are not covered by this Agreement.

The Agency has the right to make changes to conditions of employment in the exercise of its management rights pursuant to 5 U.S.C. §7106, or for any other reason associated with the accomplishment of its mission. However, the Agency does recognize its potential obligation, consistent with applicable laws, rules, and regulations, to notify the Union of such changes and to negotiate, upon request of the union, pursuant to 5 U.S.C. §7106(b)(2) and (3).

#### B. Levels of Negotiations

1. Local (Field Office) Level – Negotiations of local-level changes will be conducted and/or facilitated by the Director of the local component. i.e., Field Office Director or local Office Head, or equivalent, (or designee) and the applicable Local President (or designee).

#### C. Applicable Negotiation Procedures.

The procedures contained in this Section shall constitute the ground rules for all negotiations under this Article, unless the parties mutually agree to do otherwise.

1. Notification Procedure. In issuing, revising or canceling rules and regulations relating to personnel policy, practices, procedures and matters affecting conditions of employment, the Employer shall give due regard to the obligations imposed by applicable laws, rules, regulations, and this Agreement. Before making changes to bargaining unit employees' conditions of employment, the Agency shall provide to the Union's President, Vice-President or President's designee with written notice of the proposed change(s) as soon as practicable. Such notice may be provided to the Union by mail, hand delivery, e-mail or facsimile (fax) or by any other method mutually agreed upon by the parties.

Specific procedures to be used pursuant to this Article are as follows:

- a. Prior to implementation, the Agency will provide written notice to the Union of the Agency's intent to make a change(s) of bargaining unit employees' conditions of employment (that are not otherwise covered by the parties' agreement).
  - b. The Union will have fifteen (15) calendar days to advise the Agency, in writing, of the Union's request to negotiate. After the Union's request to negotiate, the Union will then have ten (10) additional calendar days to provide the Agency with proposals. The parties will then schedule a time and begin negotiating within ten (10) calendar days after the Agency's receipt of the Union's proposals. Any timeframe hereby established may be changed by mutual consent.
2. Bargaining Procedure. After receipt of the Union's proposals, the Agency and Union will bargain, as appropriate and in accordance with applicable law, rule and regulation, If the Union's proposals are not provided to the Agency within the ten (10) calendar days as stated

above, then the request to negotiate will be deemed waived and closed, and the Agency may proceed with implementation, unless an extension is requested and approved in advance.

- a. The Parties will mutually agree to the location to conduct the negotiation and may choose by mutually agreement to conduct the negotiation virtually and or teleconference.
- b. Negotiations shall take place as soon as practicable, but no more than ten (10) calendar days after the Union has provided proposals, unless the parties mutually agree to extend the period. Bargaining shall occur during regular duty hours, unless otherwise mutually agreed by the Parties. The Parties will endeavor to reach agreement and conclude bargaining within ten (10) calendar days from the start of negotiations, but that period may be extended by mutual agreement of the Parties. If the parties are unable to reach agreement prior to implementation date declared by the agency, and the criteria in 5.2 D(1) is met, post implementation bargaining procedures pursuant to section (D) of this article will apply.
- c. The Parties may raise no additional proposals or subjects of bargaining after submission of its initial proposals except by mutual agreement, or under the post implementation bargaining procedure under Section D of this Article.

#### D. Post-Implementation Bargaining Procedure.

1. Post-implementation bargaining is bargaining after a management-initiated change has been implemented. When the Agency determines that a particular change is mission critical or in case of emergencies, in accordance with law, rule or regulation, and must be implemented by a certain date, and once union proposals have been submitted to the Agency, the procedures in section C.

#### E. Agency Head Review.

All negotiated agreements shall be subject to review by the head of the Agency (or his/her designee) pursuant to 5 U.S.C. §7114(c).

## ARTICLE 6 – EFFECTIVE DATE, DURATION AND DISTRIBUTION OF AGREEMENT

### GENERAL:

Each Party shall have its own original copy of this Agreement.

6.1 EFFECTIVE DATE: This Agreement shall become effective on the earlier of the following two dates: (1) the 31st day from the date it was executed by the Parties unless it has been disapproved by the Agency Head pursuant to 5 U.S.C. Chapter 71, § 7114(c)(2); or (2) the day it is approved after review by the Agency Head.

### 6.2 DURATION OF AGREEMENT:

- A. This Agreement will remain in full force and effect for 4 years from its effective date and automatically renew itself from year to year thereafter. However, either party may give written notice and to the other party no more than 105 or less than 60 calendar days prior to the expiration date of its intention to reopen and amend, modify or terminate the Agreement. Ground Rules Negotiations shall begin no later than 30 calendar days after these conditions have been met. Proposal will be submitted as establish in the ground rules.
- B. After 12 months following the effective date of this Agreement, the parties may mutually agree to reopen no more than 1 Article during the term of the Agreement. Such negotiations shall be conducted in accordance with Article 5 - Mid Term Bargaining.

6.3 DISTRIBUTION: Within 30 days of the effective date of this Agreement, the Agency will post the Agreement on applicable sites, such as the NRCS, Puerto Rico SharePoint and the NRCS and FPAC Intranet (Human Resources/Labor Relations Section). The Agency will notify bargaining unit employees of the posting via email.

## ARTICLE 7 - GRIEVANCE PROCEDURE

7.1 COMMON GOALS: It is the intent of the Agency and Union to have open discussions about disagreements in the workplace, to treat such matters seriously, and to cooperate in the spirit of mutual problem-solving to resolve disputes. Since grievances often arise from misunderstandings that can be settled promptly and satisfactorily on an informal basis, the Agency and Union will encourage the potential grievant to discuss the complaint with the responsible management or Union officials at the lowest level before filing a written grievance. The Union, if requested by the employee, has the right to participate either in person or telephonically in the discussions with management officials. If informal efforts do not lead to a resolution, the employee may proceed with next steps within the grievance procedures.

The Agency shall not construe the filing of grievances as reflecting unfavorably on an employee's good standing, performance, loyalty, or desirability to the organization, nor shall the Union or employees file grievances in order to affect adversely the perception of the person or reputation of any representative of the Agency.

7.2 SCOPE: This grievance procedure may apply to applicable matters of concern or dissatisfaction by bargaining unit employees, the Union or the Agency regarding the interpretation, application or violation of law, regulation, or this Agreement.

7.3 EXCLUSIVITY: Representation of bargaining unit employees shall be the sole and exclusive province of the Union. This is the exclusive procedure available to bargaining unit employees, the Union or the Agency for the resolution of grievances arising under this Agreement.

7.4 EXCLUSIONS: Based on statutory prohibition, grievance on the following matters are excluded from the scope of this procedure:

- A. Claimed violations relating to prohibited political activities;
- B. Retirement, life insurance, or health insurance issues;
- C. Suspension or removal for National Security reasons;
- D. Appointment, certification, or examination issues;
- E. The classification of any position which does not result in the reduction-in-grade or pay of the employee;
- F. Issues involving a non-bargaining unit position.
- G. Actions which terminate any employee serving under a probationary, temporary, part-time, or term appointment.

Regarding these exclusions, although the grievance procedure may not be the correct forum, management will provide instructions directing the employee to the correct forum.

7.5 GRIEVABILITY: In the event either party should declare a grievance non-grievable or non-arbitrable, the original grievance shall be considered amended to include this issue. All disputes of grievability/arbitrability may be referred as a threshold issue in the related grievance, except where the parties agree to hear the threshold issue and merits of the grievance separately.

7.6 REPRESENTATION: Employee(s) utilizing this grievance procedure will have the right to be represented and/or advised by the Union. In addition, an employee and or group of employees have the right to present or process a grievance under this procedure on their own behalf. In such cases, the Union will be afforded the opportunity to participate, on official time during any and all formal discussions/meetings, between the Agency and the grievant(s) relating to the grievance filed.

7.7 TIME LIMITS: The parties agree that an identifiable action with a determinative date will serve as the initial filing date of a grievance. In no instance will a “continuing violation” theory be used to extend a grievance filing deadline. The parties agree, that any grievance resulting in back pay to the aggrieved party, will limit the timeframes for back pay to one year of an individual employee’s rights, but six months for violations involving an entire class of employees.

- A. Time limits for the remainder of the grievance procedures in this Article may be extended by mutual consent of the Parties.
- B. The Parties agree to respond to the grievance within the time frames allowed. However, if the Parties are unable to respond within the time frames, the reason for the delay will be stated in writing, and a mutually agreed upon extension of the time limits will be granted.
- C. When information is requested from a Party which is needed to process a grievance or determine if a grievance exists, the party will supply a response within fourteen (14) calendar days and the time limits will be extended equal to the amount of time required to receive the information.
- D. Failure by the grievant to meet time limits or to request and receive an extension of time, shall automatically cancel the grievance, unless there are extenuating circumstances.
- E. Failure of the party against which a grievance was filed to comply with time limits will allow the grieving party to advance the grievance as provided below.
- F. In the event of an emergency (including a furlough/shutdown), all time limits shall be suspended until the situation end and agency operation resume.

7.8 GRIEVANCE PROCEDURES: The following procedures are established for the resolution of grievances:

A. STEP 1

Any grievance must be submitted in writing by the concerned employee or union representative with the appropriate first line supervisor in an attempt to resolve the matter. Grievances must be presented within twenty (21) calendar days from the date the employee or union knew or should have known of the events giving rise to the grievance. Within fourteen (14) calendar day of receiving the grievance, the supervisor shall review the matter being grieved and hold a meeting to include the supervisor, employee's relations specialist, the grievant and the designated Union representative. The union representative must be present if the employee so desires. However, if an employee(s) presents a grievance directly to the Agency for adjustment consistent with the terms of the agreement, the local may have an observer present. The Agency will respond in writing within 21 calendar days from the date of the meeting

B. STEP 2

If the grievance is not resolved at Step 1, the union representative and/or the employee (grievant) may, within 14 calendar days, of the step 1 decision, forward the grievance to the Caribbean Area Director or designee for further consideration and a meeting will be held as mutually agreed. The Director or designee will review the grievance, consult with the first line supervisor and the union representative, and give the employee and union representative a written answer within (21) calendar days after receipt of the grievance.

C. If the grievance is not satisfactorily resolved at Step 2, the union may refer the matter to Arbitration. All time limits in this article may be extended by mutual consent.

D. The grievance must contain, but is not limited to, the following information:

1. The name of the grievant;
2. Specific nature (details of the violation such as who, what, when, where, why, and how) of the grievance to where the other party understands the grievance;
3. The law, rule, regulation, policy, procedure, or contract article, the Party allegedly violated;
4. Lists any prior attempt to resolve the issue if applicable;
5. The specific relief / remedy requested.

7.9 ALTERNATIVE DISPUTE RESOLUTION (ADR): If both parties agree, the matter may be referred to an Alternative Dispute Resolution procedure, as outlined in Article 23, Alternative Dispute Resolution of this Agreement for possible resolution. The terms and timeframes for alternative resolution will be jointly determined at the time the matter is referred. If alternative dispute resolution is agreed by both parties, grievance procedure timeframes will be in abeyance during the participation of ADR process.

#### 7.10 UNION-MANAGEMENT GRIEVANCES

- A. Either party may opt to submit grievances through their respective representatives.
- B.
- C. A grievance alleging a continuing violation may be presented at any time, but any remedy shall be limited to violations that occurred within twenty-one (21) calendar days before the date of filing unless a longer period is provided by statute or regulation. A grievance concerning a particular act or occurrence must be presented to the other party within twenty-one (21) calendar days of the act/occurrence or of the date the grieving party became aware of it.
- D. When a grievance is filed, the parties shall meet and/or discuss the matter within fourteen (14) calendar days. A written decision shall be issued within fourteen (14) calendar days of the meeting. If the grievance is not settled by this method, either party may invoke arbitration within 21 calendar days following receipt of the final decision.

#### 7.11 FAILURE TO MEET REQUIREMENTS

- A. In employee grievances, failure on the part of the Employer to meet any of the time requirements of this procedure shall permit the grievance to advance to the next step.
- B. A party's failure to issue a written decision in a timely manner shall not prevent the grieving party from pursuing the grievance to the next step in accordance with the terms of this agreement. If the Employer fails to meet a deadline at the final stage of grievance processing and the grievant wishes to pursue the grievance, the Union may, at its option, submit the matter to arbitration within 30 calendar days of the missed deadline.
- C. If Union does not elevate the grievance to step 2 the grievance process is ended and Arbitration may not be invoked.

## ARTICLE 8 – ARBITRATION

8.1 RIGHT TO ARBITRATION AND SCOPE: Any grievance under the terms of this Agreement that is not resolved may be subject to binding arbitration. Only the Union or the Agency may invoke arbitration in writing (email or letter). Any issue not raised by a Party before or at the time a final grievance is presented is waived and may not be raised in arbitration.

8.2 Authority of the Arbitrator: The jurisdiction and authority of the arbitrator shall be confined to the issues presented in the grievance. The arbitrator shall not have the authority to add to, subtract from, or modify any of the terms of this Agreement or any supplemental agreement between the Parties. The arbitrator shall resolve any grievability or arbitrability disputes consistent with this Agreement. The arbitrator shall not have the authority to extend timelines for filing or arbitrating grievances. All timelines will be strictly adhered to unless they are extended by mutual consent of the parties.

- A. Either the Union or the Agency may invoke arbitration by serving a notice on the other; The Union will notify the Caribbean Area Director or designee or, the Agency will notify the Union President or designee within 21 calendar days following receipt of the final decision under Article 7. The notice will identify the grievance and the specific relief requested and will be signed and dated by an authorized representative on behalf of the party submitting the matter to arbitration. If either party fails to invoke arbitration within the time specified, the right to seek arbitration will be waived.
- B. The invoking party will request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven (7) impartial persons qualified to act as arbitrator. The request to FMCS will include a brief statement of the issue(s) involved in the dispute. If the parties cannot agree to a joint statement, each party may separately submit a statement. If the parties fail to agree on a joint submission of the issue for arbitration, each shall submit a separate submission and the arbitrator shall determine the issues to be heard. Any cost for the list will be shared equally by the Agency and the Union.
- C. Within seven (7) days of receipt of the list, the invoking party will contact the other party to choose an arbitrator. If they cannot mutually agree on one name from the list, the invoking party will strike one name first and then each party will alternately strike one name from the list until only one name remains. The remaining name on the list shall be the duly selected arbitrator. The invoking party shall immediately notify FMCS of the selection. If either party fails to participate in the striking process within 21 calendar days of receipt of the list, the other party will make the arbitral selection. In the event neither party complies with the aforementioned provision, the grievance is terminated.
- D. Arbitration hearings will be held at the USDA NRCS State Office or another location as mutually agreed by the parties.
- E. The parties will exchange lists of witnesses to be called at least seven (7) Calendar days prior to the opening of the hearing. Witnesses will be allowed a reasonable amount of official time to prepare their testimony and gather required facts/records, etc.
- F. The parties should exchange lists of facts and/or evidence that may be stipulated to, by both parties, at least 3 Calendar Days prior to the opening of the hearing.



- G. The grievant, to the extent necessary to prepare and participate in the hearing shall be considered in a duty status.
- H. The arbitrator shall be requested to render and serve their written decision within 30 Calendar days after the conclusion of the hearing.
- I. The Arbitrator's fee and all related expenses shall be borne equally by the parties.
- J. The arbitrator's award shall be binding on the parties. However, either party may file exception to the award with the Federal Labor Relations Authority (FLRA).
- K. If the arbitrator fails to render a decision on arbitrability issues prior to the hearing, the arbitrator shall hear arguments regarding both the arbitrability and the merits of the cases at the same hearing.
- L. If the Parties agree that a transcript is necessary, the Parties shall share the cost of the transcript. If there is a disagreement about the need for a transcript, the Union President and the designated Agency management official shall attempt to resolve the disagreement. If no agreement is reached, the interested party is solely responsible for paying for all cost.

## ARTICLE 9 OFFICIAL TIME

### GENERAL

The Employer shall approve reasonable amounts of official time authorized by 5 U.S.C. 71 of the Federal Service Labor-Management Relations Statute (“the Statute”) as follows.

#### 9.1. Official time

Official time is paid duty time during which bargaining unit employees, without loss of pay or charge to leave, serve as union representatives to perform various labor relations and representational obligations on behalf of bargaining unit employees. The Statute entitles Union representatives to official time in order to negotiate collective bargaining agreements (including impasse proceedings) and to participate in proceedings before the Federal Labor Relations Authority. In addition, the Statute authorizes an agency and union to agree that additional official time is reasonable, necessary, and in the public interest.

- A. Reasonable official time shall be granted to elected/appointed Union officers, designated stewards, and other representatives authorized by the Union, in accordance with this article and to the extent that official time falls within the duty hours of the Union officer, steward, and/or representative affected;
- B. The Union and the Agency recognize that the granting of official time may ultimately lead to improved labor management relations. Such a relationship is in the interest of all parties, including the public; and
- C. Except when specifically agreed to in advance, travel-related expenses for the Union’s use of official time shall not be paid by the Employer.

#### 9.2. Procedures for approving official time

The procedures for approval of official time shall be:

- A. If an employee has a problem or situation which the employee desires to discuss with the Union during working hours, upon request to their supervisor in advance and workload permitting, the employee may report to the Union official as approved. If the employee cannot be made available at that time, the supervisor shall inform the employee when he/she can be made available.
- B. Union representatives shall be permitted to leave their work to perform and discharge their representational responsibilities once approved. This shall be done in accordance with the following:
  - 1. Local Union representatives desiring to perform and discharge their responsibilities must request the time from their supervisor prior to leaving their work. When Management initiates the need for a representative, Management shall coordinate with the affected supervisor and secure, if necessary, the representative’s relief. If initiated by the Union, the representative shall inform the supervisor of the anticipated time that the representative shall be away from their work, where the representative may be contacted, and the general nature of the function to be performed (i.e., meeting, complaint, etc.). Specific individuals or problems shall not be disclosed to the supervisor;
  - 2. For the purpose of representation (as referred in 5 U.S.C 71) the supervisor shall ensure that the designated representative is, when necessary, expeditiously relieved. If the representative is unable to be relieved, the function for which the representative requested to be relieved shall be rescheduled to a time when the representative is able to attend.

3. **Management** shall ensure that the designated representative is relieved to attend the meeting; and
4. Upon returning to work, representatives shall accurately report all official time used in the Employer's Time and Attendance reporting system (currently webTA) using the codes identified in the Appendix to this Article.

### 9.3 The Purposes for Which Official Time May be Granted

The Agency shall approve a reasonable amount of official time for designated Union representatives for the following purposes:

- A. Attending formal discussions and any other meeting with Agency (Management) officials concerning personnel policies, practices, or other general conditions of employment or any other matter covered by 5 USC Chapter 71;
- B. To prepare unfair labor practice charges (ULP's) or participate in any other proceedings before the FLRA in accordance with Section 7131(c) of 5 USC Chapter 71;
- C. When an employee elects to have a Union representative in the following circumstances:
  1. To present oral and/or written responses to disciplinary/adverse actions or unacceptable performance actions proposed against employees;
  3. To present a response to the reviewing official after receiving notice from the rating official on a denial of a within-grade increase;
  4. To represent an employee at an appropriate third-party hearing, as well as appeals (to include interviewing witnesses scheduled to testify); and
  5. In *Weingarten* (investigatory) meetings;
- D. To participate in **agency** committee meetings and/or work groups;
- E. To participate with representatives of Management in negotiations at all levels;
- F. To present the views of the labor organization to heads of agencies and other officials of the executive branch of the government, the Congress, or other appropriate authorities, when such matters may affect conditions of employment of bargaining unit employees as defined by 5 USC Section 7103;
- G. To travel to and attend training that is mutually beneficial to the parties. The Agency at its option may pay any travel-related expenses;
- H. To assist an employee in all steps of the grievance process;
- I. To review and/or respond to memoranda, letters, new instructions, manuals, notices, etc., which affect personnel policies, practices, and/or conditions of employment;
- J. To complete necessary reports and forms to meet requirements imposed by federal agencies upon the Union to disclose certain information about its operations;
- K. To confer with national staff representatives of the Union in connection with a grievance, arbitration, and/or unfair labor practice charge;
- L. For any other purpose agreed to by the parties; and
- M. Preparation for the activities named above.

As required by 5 USC § 7131(b), official time shall not be used for internal Union business.

#### 9.4 Training

- A. Employee Union representatives shall be excused from duty, workload permitting, to attend training which is designed to advise representatives on matters within the scope of 5 USC, and which is of mutual benefit to the Employer and the Union. The employee Union representative wishing to attend such training shall present to the Employer a written description of the course demonstrating which portion of the training is mutually beneficial. Union representatives attending training authorized under this section shall be assigned to shift, Monday through Friday, while attending training.
  
- B. The parties agree that training under this section is generally of mutual benefit when it covers areas such as contract administration, grievance handling, and information related to federal personnel/labor relations laws, regulations, and procedures. Training is not mutually beneficial when it deals with matters related to internal Union business.
  
- C. The Union shall be entitled to 200 hours per calendar year of official time for such training during the term of this Agreement. The Agency may approve additional hours as reasonable, necessary, and in the public interest when requested.

**GUIDANCE ON CODING OFFICIAL TIME FOR REPRESENTATIONAL FUNCTIONS BY UNION OFFICIALS OR OTHER BARGAINING UNIT EMPLOYEES IN USDA NRCS.**

This guidance is intended to clarify instructions contained in Title 1, Chapter 7, Section 1 of the NFC Payroll/Personnel Manual, Time and Attendance Procedures, Time and Attendance Instructions for transaction codes (TC) 35, 36, 37, and 38, regarding the coding of official time used for representational functions authorized in the Federal Labor Statute or in a collective bargaining agreement. The accurate coding of official time is necessary in order to ascertain program costs, comply with OPM and other reporting requirements, and provide both USDA managers periodic feedback on program activity levels. This guidance is not an exhaustive listing of examples for when official time might be authorized, but rather an attempt to provide Labor Relations Practitioners and Supervisors with illustrative listing of representational functions to ensure consistent application of Employer time and attendance regulations.

<b>Transaction Codes and Applicable Representation Functions</b>			
<b>TC 35 Union/Term Contract Negotiations (includes re-opening &amp; renegotiation of term agreement articles)</b>	<b>TC 36 Union/Mid Term Negotiations</b>	<b>TC 37 Union/Ongoing LMR Act (Functions not covered under TC 26 &amp; 28)</b>	<b>TC 38 Union/Grievance Appeal Representation</b>
<ul style="list-style-type: none"> <li>• Ground rules negotiations</li> </ul>	<ul style="list-style-type: none"> <li>• Ground rules negotiations</li> </ul>	<ul style="list-style-type: none"> <li>• Partnership &amp; labor-mgmt committee meetings or task forces</li> </ul>	<ul style="list-style-type: none"> <li>• Grievance or arbitration proceedings</li> </ul>
<ul style="list-style-type: none"> <li>• Negotiations</li> </ul>	<ul style="list-style-type: none"> <li>• Negotiations</li> </ul>	<ul style="list-style-type: none"> <li>• Attendance at formal discussions</li> </ul>	<ul style="list-style-type: none"> <li>• ULP proceedings</li> </ul>
<ul style="list-style-type: none"> <li>• Mediation with FMCS</li> </ul>	<ul style="list-style-type: none"> <li>• Mediation with FMCS</li> </ul>	<ul style="list-style-type: none"> <li>• Attendance at <i>Weingarten</i> meetings</li> </ul>	Other dispute resolution processes where rep. functions are performed, including: <ul style="list-style-type: none"> <li>• Adverse actions</li> <li>• EEO complaints</li> <li>• ADR</li> <li>• Other appellant processes</li> </ul>
<ul style="list-style-type: none"> <li>• Impasse proceedings</li> </ul>	<ul style="list-style-type: none"> <li>• Impasse proceedings</li> </ul>	<ul style="list-style-type: none"> <li>• Attendance at Union-sponsored training</li> </ul>	
<ul style="list-style-type: none"> <li>• Negotiability proceedings</li> </ul>	<ul style="list-style-type: none"> <li>• Negotiability proceedings</li> </ul>	<ul style="list-style-type: none"> <li>• Union representative on Employer teams or task forces</li> </ul>	
		<ul style="list-style-type: none"> <li>• Representation proceedings</li> </ul>	
Note: For each of the representation functions listed, include preparation time and any travel time as authorized under terms of the Employer’s collective bargaining agreement or practice.			

## ARTICLE 10 – UNION SPACE AND GOVERNMENT EQUIPMEN

### 10.1 - OFFICE SPACE AND FURNISHINGS

A. The Employer will provide adequate space for confidential discussions between bargaining unit members and designated Union representatives, held in accordance with the terms of this Agreement. When available, during and after duty hours, the Union may reserve and use the Employer's conference rooms or other suitable spaces for official or internal business meetings of its officers, stewards, and members.

B. If available, upon request the employer will provide office space with access to government phone and printer for official union business.

### 10.2 - NON-DUTY USE OF FACILITIES

The Employer agrees that where there are facilities, they shall be made available for local meetings before or after duty hours or during lunch periods if such space is not already committed. The Union must give sufficient advance notice to ensure no disruption to the normal mode of business.

10.3 CONTENTS OF LITERATURE: Any document produced and disseminated by the Union must not violate any law, regulations, security of the office, or provisions of this Agreement. Union statements will not include defamatory remarks that undermine the authority of the Agency and its officials. Any complaint concerning the Union's compliance with these requirements may be made the subject of a grievance in the negotiated grievance procedure.

## ARTICLE 11 – DUES WITHHOLDING UNDER 5 U.S.C. § 7115

11.1 - Dues Withholding In order to initiate Union dues withholding by payroll deduction, a bargaining unit employee must complete a Standard Form (SF) 1187, “Request For Payroll Deductions For Labor Organization Dues”. The SF-1187 can be obtained from either the Union or the Administrative Officer. The employee must complete the appropriate spaces, sign it, and submit it to the Union. The Union shall complete its portion of the form before submitting it to the Administrative Officer. This official shall provide a receipt copy to the employee, indicating the pay period in which the deduction is to be effective, i.e., the employee’s anniversary date.

11.2 - Dues Revocation A bargaining unit employee may terminate Union dues withholding on the anniversary date of the pay period in which the allotment began. To cancel the dues allotment, the employee must submit a completed Standard Form (SF) 1188, “Cancellation of Payroll Deductions for Labor Organization Dues”, After an employee has been on payroll deduction of union dues for one year the employee may voluntarily revoke an allotment for the payment of dues by completing a SF-1188,. The employee must complete the form, sign it, and submit it to the Union. The Union shall complete its portion and submit it to the Administrative Officer. The Administrative Officer shall provide a receipt copy of the form to the employee, indicating the pay period in which the dues allotment will cease. Employees who are uncertain of their anniversary date can contact either the Union or the Administrative Officer.

## ARTICLE 12 – TRAVEL

### GOVERNMENT TRAVEL:

Whenever practicable, time spent in travel status away from the employee's official duty station shall be scheduled by the Employer within the employee's normal working hours. When travel is performed during non-duty hours, the determination of whether such travel constitutes hours of "work" shall be made under 5 USC, Provision General Service Administration, Federal Travel Regulation or the Fair Labor Standards Act, whichever regulation is applicable.

- A. Travel shall be in accordance with all applicable federal travel regulations, laws, rules, policies, procedures, and practices, as amended.
- B. All travel must be approved in advance by the employee's supervisor.
- C. If available, a Government-owned vehicle should be used in lieu of a personally owned vehicle.
- D. A Government travel credit card may be provided to employees through appropriate policy and procedure. Failure to comply with regulations, terms and conditions of the card, or to timely make payments on the amount due, can subject the cardholder to disciplinary action and suspension or cancelation of the Government travel credit card.



## ARTICLE 13 – MERIT PROMOTION

### GENERAL:

The Union recognizes that the Employer retains the right to fill bargaining unit position through all proper methods including non-competitive sources and OPM-authorized list of eligible applicants. If the Employer chooses to use the Merit Promotion Plan to fill a bargaining unit position, the Employer shall follow the provision of the current USDA Department Regulation “Merit Promotion and Internal Placement”, consistent with this Agreement, government-wide regulation and statute.

## ARTICLE 14 – HOURS OF DUTY

14.1 Statement of Policy the Employer and Union are committed to NRCS General Manual 360 Part 427 Hours of Duty”. However, they also agree that implementation of any of the alternative work schedules requires good judgment to guarantee that such arrangements do not make it necessary for a staff member within an office to carry an unreasonable burden. In addition, implementation of any alternative work schedules must enable the Agency to meet its mission needs.

### 14.2 - Breaks

A. Employees are authorized two (2) breaks lasting up to fifteen (15) minutes each day. No more than one break period may be taken in the morning or in the afternoon. Breaks may not be used to delay arrival times, extend lunch periods, or advance departure times, and may not be carried over or accumulated.

B. The fifteen (15) minute break in each part of the day may be taken at one time or in shorter intervals but total time in each part of the day shall not exceed fifteen (15) minutes.

C. Break periods are part of the duty day. Employer business will, from time to time, interrupt breaks with phone calls and walk-in customers. Employees shall, in such cases, shorten breaks but still be authorized the fifteen (15) minutes at some time each morning and afternoon. Breaks shall be scheduled to maintain appropriate office coverage.

D. Employees are to inform supervisors when they will be taking their breaks. It is expected That employees shall remain reasonably accessible during break periods and inform their supervisors if they intend to leave the premises.

## ARTICLE 15: PARKING AND PARKING AREA

15.1 The employer will, insofar as reasonably possible, locate offices in areas where there is sufficient parking space for all employees.

15.2 Parking will be available for all USDA NRCS employee, partners and students. Employee who has a temporary physical need (example but not limited: broken leg, surgery, etc) will notify in writing the supervisor and the union about such request, upon review employer will granted or denied the request. If granted the most accessible parking available will be reserved for the employee until recovery. Employer will notify the union official about such decision; union can invoke negotiation about the matter.

15.3 After a physically handicap employee has submitted a written request for a parking space and it has been certified that the employee is permanently handicap is of such a nature as to warrant reserving such space, the employer will reserve the required space or spaces.

## ARTICLE 16- TIME and LEAVE

The Agency shall administer leave in accordance with applicable laws, rules, regulations, policies, procedures, practices, as amended.

The Agency and Union have a common interest to create a Family Friendly Workplace which enables the Agency to meet their mission needs while allowing employees flexibility to meet both work and family needs

All disputes concerning time and leave of employees and positions in the bargaining unit shall be resolved by applying the relevant ~~and~~ applicable government-wide regulations and statutes such as the FMLA and Title 5 U.S.C. § 6307 and 5 CFR Part 630.

Generally, supervisors shall approve or disapprove properly completed and submitted leave requests within five (5) workdays of submission. However, leave already approved may be cancelled in the event of a bona fide operational emergency of such magnitude or significance that the public business cannot be effectively conducted or accomplished without the services of the employee.

### 16.1 Federal holidays

The following Federal designated holidays shall be granted to all bargaining unit members unless changed by law and/or regulations. Holidays by Federal Statute.

- New Year's Day - January 1
- Martin Luther King - Third Monday in January
- Washington's Birthday - Third Monday in February
- Memorial Day - Last Monday in May
- Juneteenth- June 19
- Independence Day - July 4
- Labor Day - First Monday in September
- Veterans Day - November 11
- Columbus Day - Second Monday in October
- Thanksgiving Day - Fourth Thursday in November
- Christmas Day - December 25

### 16.2 Local Holiday

Management will approve liberal use of annual leave and/or leave without pay for absences on the following Puerto Rico holidays.

- Three Kings Day - January 6th
- Good Friday - date varies between March and April

## ARTICLE 17 – TELEWORK

### AGENCY POLICY:

The parties agree bargaining unit employees may telework consistent with the most updated Agency's telework policy subject to mission requirements and 5 U.S. Code § 6502 applicable laws, government-wide rules, and regulations, and OPM policy.

## ARTICLE 18 – INCLEMENT WEATHER

### GENERAL:

The Agency shall administer weather and safety leave in accordance with applicable laws, rules, regulations, policies, procedures, practices, as amended, such as but not limited to C.F.R 630.

18.1 UNSCHEDULED LEAVE: Employees are reminded that they have the option to contact their supervisors and request unscheduled leave to remain at home or leave the office early if there is inclement weather and the office is open. Any reference here to the use of leave includes the use of annual leave, comp time/comp travel, credit hours, time off awards or any other type of paid time available to the employee. If an employee arrives later than the delayed arrival time due to weather, they may flex their schedule, if possible, or use unscheduled leave to make up the difference.

## ARTICLE 19 – PERFORMANCE MANAGEMENT

### 19.1 - Statement of Policy

Management and the Union has agreed that the purpose of the performance management system is to improve individual and organizational performance, program effectiveness, and accountability by focusing on results, service quality, and customer satisfaction, and by aligning standards and elements with organizational goals and strategic plans.

### 19.2 – Employee Participation

Employees will be provided the opportunity to meet with their supervisor to provide input into the establishment of their performance elements and standards. Work performance will be discussed with the employee in private at least once during appraisal period. As a minimum, this progress review will be accomplished during midpoint of the appraisal period.

Employer agrees to notify, in writing, AFGE Local 0055, of any changes in performance appraisal system policies and practices affecting the working conditions according to Article 3, Section 7(a).

### 19.3 – Appraisal System Principles

A. In General: Performance standards must be consistent with the duties and responsibilities contained in the employee's position description. The application of performance standards and the critical and non-critical elements must be fair, reasonable, and to the maximum extent feasible, objective. Performance standards will be applied in a fair and equitable manner.

B. Performance Standards: Performance standards must be in writing and provided to the employee at the beginning of the appraisal period and given to the employee at that time. Standards will be established in such a way that performance can be accurately evaluated. When feasible, terms such as timeliness, quantity, quality, and accuracy will be expressed to indicate how well, how accurate, how soon, or when, how many or how much.

C. Measuring Performance: When statistical data is utilized in order to evaluate employee performance, the procedures that are used must reasonably insure the accurate evaluation of performance.

D. Appraising Employees: When rating employees or otherwise apply performance standards, the Employer shall consider factors, which affect performance that is beyond the control of the employee. An employee will be held accountable only for those job elements and performance standards for which the employee is officially responsible. Employees who use authorized official time in labor relations' activities will not be disadvantaged on their appraisals for approved absences or use of official time for labor relations.

## ARTICLE 20 – POSITION DESCRIPTIONS AND CLASSIFICATION

### GENERAL

The parties agree that position descriptions (“PDs”) shall accurately reflect the principal duties and responsibilities of positions. If the duties of a position change significantly, the employee shall be provided with an accurate, updated PD.

#### 20.1 POSITION DESCRIPTION

A. The Employer shall prepare Position Descriptions (“PDs”) and those PDs shall contain the principal duties and responsibilities for the purpose of classification. The Employer shall provide each bargaining unit member with an official description of his/her duties and responsibilities in the form of a PD within 30 days after the employee assumes their duties.

B. Disputes about the appropriate schedule, title, series or grade of an employee’s position are covered by statutory classification appeal procedures.

C. When an employee believes the PD of his or her position does not accurately reflect his or her regularly assigned responsibilities and regularly performed duties, the employee may:

- (1) talk to his or her supervisor to resolve the alleged discrepancy;
- (2) request a desk audit by the Human Resources and
- (3) file a classification appeal to OPM. The foregoing three (3) steps are the sole means of determining the grade level of the duties permanently assigned to, and performed by, an employee. Any employee may file a statutory classification appeal of his/her position at any time in accordance with appropriate rules and regulations.

D. The Parties agree that phrases such as “other related duties” or “other duties as assigned” used in PDs mean assignments reasonably related to duties or responsibilities or qualifications for the particular employee.

E. The Employer shall provide any employee with a copy of his/her PD if the employee’s position changes significantly or the employee changes to a different position.

F. A reclassification to a higher grade shall be effective at the conclusion of the first full pay period following final approval by the Servicing Personnel Office if the incumbent of that position is promoted non-competitively to the position whenever budget and staffing ceilings allow it.

G. Collateral duties (duties not requiring more than 25% of an employee’s total productive work-time) may be part of PDs. Employees shall be afforded reasonable time to complete collateral duty assignments.



## ARTICLE 21 – EMPLOYEE AWARDS AND RECOGNITION

GENERAL: The Union and the Employer acknowledge the importance of timely recognition of employees for high quality contributions to the Department and its mission. Recognition and encouragement by the Employer is an important incentive that increases employee job satisfaction and contributes to the overall quality of work performance.

Management retains their right to exercise discretion to issue or to not issue employee awards. It is recognized by the Parties that there are no entitlements to awards, and all awards should be issued in the best interest of the Department, its employees and the American taxpayer.

Awards will be granted in a consistent and objective manner without discrimination, and in accordance with applicable laws, rules, and regulations.

Department Awards may include but are not limited to the following: performance awards, quality step increases (QSIs), time off awards, on-the-spot awards, and special act awards to individuals or groups, if they meet the criteria for such an award. Awards must be in accordance with current Department policy and applicable laws, rules, and regulations.

## ARTICLE 22 – PREMIUM PAY AND CREDIT HOURS

### GENERAL:

Premium pay and credit hours will be compensated in accordance with the applicable laws, rules, regulations, policies, and practices as amended.

### 22.1 OVERTIME:

- A. Overtime pay is pay for hours of work officially ordered and approved in advance in excess of the employee's basic work requirement.
- B. The Agency will give an employee as much advance notice as practicable in making overtime assignments. In certain situations, operational needs may prevent advance notice.
- C. Overtime will be distributed consistent with workload requirements and resource availability. The Agency may order or approve overtime by special projects or work assignments according to expertise of the employee. Overtime will be distributed as equitably as possible.
- D. When there are more than sufficient qualified candidates expressing an interest in working overtime, the Agency will fill its needs from the candidates based on seniority using the leave service computation date.
- E. If the Agency is unable to fill its needs through qualified candidates, it may assign the work to the qualified employees based on reverse seniority using the leave service computation date.
- F. The Agency will give reasonable consideration to an employee's request to be released from overtime due to personal hardship.

### 22.2 COMPENSATORY TIME IN LIEU OF OVERTIME:

- A. Compensatory time earned by the employee is accrued for an equal amount of time spent in overtime work.
- B. Nonexempt (Fair Labor Standards Act) employees will be allowed to earn and use compensatory time rather than paid overtime, provided that compensatory time must be at the request of the employee and cannot be mandatory.
- C. If the employee desires to work compensatory time instead of overtime, then the employee must request to work compensatory time in the remarks section of the employee's request in the Agency's automated time and attendance system before the Agency approves the overtime work

assignment.

- D. Once the Agency approves the overtime, the supervisor/designee must approve the compensatory time before the employee works the additional hours.
- E. Employees must use such compensatory time before using annual leave (except use or lose annual leave). The compensatory time must be used by the end of the 26th pay period following the pay period in which the compensatory time was earned. If the employee does not use the compensatory time by its expiration date, the Agency shall pay the employee the remaining time at the overtime rate of pay applicable at the time the employee worked the compensatory time.
- F. Employees are encouraged to use any compensatory time before credit hours.

### 22.3 COMPENSATORY TIME FOR TRAVEL:

- A. The employee will submit the request for compensatory time for travel through the Agency's automated time and attendance system. The employee will include in the remarks section that date and time of departure and return, the purpose of travel, the location of departure and destination, waiting times, and unusual delays.
- B. An employee may not receive payment under any circumstances for any unused compensatory time for travel. Compensatory time for travel not used within twenty-six (26) pay periods after it was earned will be forfeited.

### 22.4 CREDIT HOURS:

- A. Earning credit hours is not intended to be an ongoing, regular recurrence. If the employee regularly extends their normal work day, then the supervisor may require a change of the employee's tour of duty to be submitted prior to the start of the next pay period.
- B. Credit hours are earned between the hours of 6:00 a.m. and 6:00 p.m. to extend an employee's normally scheduled tour of duty. Credit hours can be earned while on Telework. Employees shall not earn credit hours on their non-work days or on weekends.
- C. An employee must have supervisory approval, preferably in advance, before earning credit hours. Approval may be received through verbal or written communication with the supervisor or via the time and attendance reporting system. If the employee cannot receive approval prior to earning credit hours, the employee must seek approval as soon as practicable. Any request or notification to earn any amount of credit hours will include a brief but specific description to the supervisor of the anticipated accomplishment(s) the additional time will produce. This brief description will be entered into the "Remarks" section of the request via the time and attendance reporting system.

## ARTICLE 23 – ALTERNATIVE DISPUTE RESOLUTION

### GENERAL:

The Agency shall conduct Alternative Dispute Resolution in accordance with federal laws, rules, policies, procedures, and practices, including current Departmental Regulation, “Alternative Dispute Resolution”, as amended, and this Agreement.

Alternative Dispute Resolution (ADR) is used to promote principles and practices that will contribute to improved working relationships and is designed to work towards preventing and resolving workplace and program conflicts within USDA. It is intended to resolve disputes quickly and informally.

### 23.1 POLICY:

Bargaining unit employees/Union may opt to use the ADR process for employee grievances at any stage of the grievance process prior to arbitration. The Union/Agency may opt to use the ADR process after the decision is issued for Union/Agency grievances or if no decision is issued. The ADR program may only be utilized once per bargaining unit employee grievance. This process does not take away statutory rights.

- A. ADR is voluntary, and participation is open to all aggrieved parties (employees, Union, and Agency), who agree in writing to participate. Since the ADR is voluntary the employee may terminate participation at any time.
- B. ADR is confidential. The parties will be advised that the contents of the mediation discussion are confidential. All notes will be destroyed at the close of mediation. Each party will have a copy of the ADR Agreement. The original agreement will be maintained at the National Civil Rights office.
- C. All agreements signed by parties are binding.
- D. Any issue may be considered for mediation.

## ARTICLE 24 – REDUCTION-IN-FORCE AND TRANSFER OF FUNCTION

### GENERAL:

The Agency shall conduct Reduction-in-Force (RIF) and/or Transfer-of-Function (TOF) in accordance with applicable laws, rules, regulations, policies, procedures, and practices, including 5 C.F.R. 351 as amended. Office of Personnel Management (OPM), Department and Agency regulations covering RIF and/or TOF procedures for employees in the bargaining unit will be utilized by the Agency and the Union in carrying out their labor-management responsibilities throughout the RIF and/or TOF process.

### 24.1 NOTIFICATION:

Prior to the implementation of any decision concerning a RIF and/or TOF, the Agency will notify the Union of the impending RIF and/or TOF action, providing time for the Union to review the Agency's proposal, and time to make a written response.

Following notification of a RIF and/or TOF, the Agency shall furnish to the Union, upon request, any relevant and available documents or information concerning RIF and/or TOF, subject to any Privacy Act limitations. The parties acknowledge that such documents and information include, but are not limited to, all those which are a matter of required official record, but do not include internal management communications.

### 24.2 OUTPLACEMENT SERVICES:

The Agency in accordance with regulations, will utilize all relevant outplacement programs such as Career Transition Assistance Program (CTAP) and Interagency Career Transition Assistance Program (ICTAP).

## ARTICLE 25 – FURLOUGHS

### GENERAL:

The Agency shall implement furloughs in accordance with the applicable governing law (i.e., statutes, rules and/or regulations, and directives and guidelines issued by the Office of Management & Budget and the Office of Personnel Management) current at the time of the furlough.

### 25.1 THIS ARTICLE ADDRESSES:

(1) the policy and procedures for implementing (a) “shutdown furloughs”, sometimes called “emergency furloughs”, but herein called “emergency/shutdown furloughs” and (b) “save money” furloughs; and (2) the adverse effects of such furloughs. By agreeing to this Article, the Union does not waive their or any individual employee’s rights.

- A. Circumstances beyond the control of the Agency may compel the Agency to furlough employees.
- B. The Agency has complete authority and responsibility with respect to all decisions about furloughing employees, including but not limited to, the specific employees furloughed, the days, dates, and times of the furlough, and the duration of the furlough.
- C. Upon receiving official notice of a potential furlough, the Agency shall notify the Union as soon as practical, of the following:
  1. The expected beginning date of the furlough; and, if possible,
  2. The expected duration of the furlough.
- D. For every furlough, the Agency will compile a list of excepted employees (i.e., those employees not subject to the furlough). When that list is finalized and approved, the Agency will provide the Union with a copy at or around the same time as the Agency provides that information to the excepted employees. The Agency shall also provide the Union a copy of any new list of excepted employees if, thereafter, it re-designates employees as excepted and/or recalls them to work.
- E. During a furlough, and unless contrary to law, leave status will be handled as follows:
  1. Annual leave, sick leave, court leave, military leave, credit hours, and compensatory time shall be suspended during the term of the furlough.
  2. Employees on approved leave without pay (LWOP) shall remain on LWOP for the approved duration of the leave.
  3. Employees on Continuation of Pay (COP) status under the workers compensation program shall be permitted to remain on COP status.
  4. Employees on LWOP under the Family Medical Leave Act (FMLA) during the furlough will continue to be charged LWOP and the time will count towards the twelve (12) week entitlement, as required by applicable law. However, employees on FMLA but in a pay status must be placed on furlough instead, and the furlough time will not reduce the twelve (12) week entitlement.
- F. Based on the length of the furlough, the Agency shall adjust Performance Plan Standards if and as appropriate.
- G. The Agency shall not use furloughs as punishment or discipline in lieu of other means of addressing behavior, conduct, or performance.

- H. The running of any time period within which the Agency or Union may or must act pursuant to the terms of the Collective Bargaining Agreement shall be suspended for the duration of any total suspension of normal Agency business operations.
- I. Employees may accept outside employment while on furlough, provided that such outside employment does not pose a conflict of interest with their official USDA, NRCS duties. Employees wishing to engage in outside employment should refer to the USDA Office of Ethics website at [www.ethics.usda.gov](http://www.ethics.usda.gov).
- J. The Agency shall keep employees apprised of developments affecting the furlough by means of the OPM website and other publicly accessible media.

25.2 EMERGENCY/SHUTDOWN FURLOUGHS: As soon as an emergency/shutdown furlough is announced, the Agency shall to the best of its ability provide all non-excepted employees with all relevant and necessary instructions and information as soon as it is available to the Agency.

- A. Unless the Agency directs them to do otherwise, all non-excepted employees shall report to work at the beginning of the first regularly scheduled business day during the emergency/shutdown furlough for the lesser of either (a) a period of four (4) hours, or (b) as long as is required for them to complete the tasks necessary in order to implement the suspension of normal Agency business operations in an orderly manner.
- B. During the period of an emergency/shutdown furlough, an employee shall be regarded as in furlough status during the employee's normal Tour of Duty and Work Schedule, including Compressed Work Schedules, Alternative Work Schedules, Part-Time Work Schedules and associated Off Days. To the best of the Agency's ability, the Agency will refer to furlough periods in terms of hours rather than days.
- C. During the period when the Agency's normal business operations are suspended, any excepted employee shall work only as necessary during that employee's normal Tour of Duty and Work Schedule, including Compressed Work Schedule, Alternative Work Schedules, Part-Time Work Schedule and associated Off Days, as their supervisor may require, providing the supervisor gives the employee reasonable notice of those hours in advance. The excepted employee has the ability to earn credit hours, overtime, etc. as required and approved by their supervisor.
- D. If the furlough ends during a period for which an employee previously scheduled approved leave, the employee may take that leave until their previously scheduled return to duty date.
- E. Employees will be paid for furlough time only as authorized by Congress (e.g., "Government Employee Fair Treatment Act of 2019", amending 31 U.S.C. 1341).

## ARTICLE 26 – DISCIPLINARY AND ADVERSE ACTIONS

### GENERAL:

The Employer shall determine when the need arises for disciplinary or adverse actions. Disciplinary actions and adverse actions will be taken in accordance with applicable laws, rules, and regulations in effect at the time of the action. The specific penalty for an instance of misconduct shall be tailored to the facts and circumstances of the situation for the efficiency of the service. Any disciplinary or adverse action will be taken for just cause.

### 26.1 PENALTY DETERMINATION:

- A. In order to determine the appropriate penalty for an Employee such as a disciplinary or adverse action, the Employer will, subject to applicable law, rule, and regulation, consider the relevant factors as determined by governing law (for example, applying the factors articulated by the Merit Systems Protection Board in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981) to applicable adverse actions).
- B. The Parties recognize that discipline may be progressive in nature, it is understood, however, that progressive discipline need not follow any specific sequence of disciplinary actions and that some offenses may be cause for severe action, including removal, irrespective of whether previous disciplinary or adverse actions have been taken against the offending Employee.

26.2 ADMONISHMENTS/COUNSELING: Admonishments and counseling are not formal disciplinary actions to which the procedures in this Article apply. Admonishments and counseling, which may be oral, or may be used when an Employee's conduct or performance is less than acceptable, and it is likely that an informal action will result in improvement. Admonishments and counseling as stated in this clause are not grievable. Other written notice would be subject to grievance procedure.

26.3 DISCIPLINARY ACTIONS: For the purpose of this Agreement, disciplinary actions are defined as written reprimands and suspensions of fourteen (14) calendar days or less.

### A. COUNSELING AND WARNINGS

1. Discipline may be preceded by counseling and assistance including oral warnings that are informal in nature.
2. Counseling, assistance and warnings shall be conducted privately and in such a manner so as to avoid embarrassment of the employee



A. Reprimands

1. A reprimand is a written letter to an Employee based on unacceptable conduct or poor performance. Prior notice is not required before the issuance of a reprimand. A reprimand shall state the specific reasons for the action. A reprimand will remain in an Employee's Official Personnel Folder (OPF) for up to two years, but may be removed by the Employer, at its sole discretion, anytime within the two-year period..
2. The letter of reprimand shall inform the employee that he/she has the right to file a grievance on the reprimand under the negotiated grievance procedure, and the right to Union representation.

B. Suspensions of fourteen (14) calendar days or less

An Employee against whom a suspension of fourteen (14) days or less is proposed is entitled to:

1. Fourteen (14) calendar days to respond orally and/or in writing and to furnish affidavits and other documentary evidence in support of their response. The deciding official may extend the reply period if he/she determines that good cause exists for an extension based on extenuating circumstances. The Employer will designate an official to hear the Employee's oral response who has the authority to make a final decision on the proposed disciplinary action. The right to answer orally in person does not include the right to a formal hearing with examination of witnesses.
2. Advance written notice of the proposed action that specifies the reasons for the proposed action and informs the Employee of his/her rights to review the material that was relied upon to support the reason for the action;
3. ; Be represented by the Union-
4. A written decision at the earliest practicable date, containing the specific reasons for the decision and notifying the Employee of his/her appeal rights.
5. If the decision is unfavorable to the employee, the decision may be grieved, beginning at the last step of the grievance procedure to the State Director or Designee. If the State Director was the decision maker of the action the employee can grieve to the State Director or the Union can invoke arbitration.

26.5 ADVERSE ACTIONS:

For the purpose of this agreement, adverse actions are defined as suspensions of more than fourteen (14) days, reductions-in-grade or pay and removals. Furloughs will be governed by applicable law.

An Employee against whom an adverse action is proposed is entitled to:

A. Thirty calendar days advance written notice of the proposed action, which specifies the nature of the proposed action and informs the Employee of his/her rights to review the material that was relied upon in proposing the suspension.

B. If there is reasonable cause to believe that the Employee has committed a crime for which a sentence of imprisonment may be imposed, the proposed action may be affected less than 30 calendar days from the receipt of the advance written notice or as noted in 5 CFR 752.404 (d).

C. Be represented

D. A written decision at the earliest practicable date, containing the specific reasons for the decision and informing the Employee of his/her appeal rights.

E. In accordance with 5 U.S.C. chapter 71, the employee may either: (1) appeal the matter to the Merit Systems Protection Board or raise the matter with the Equal Employment Opportunity Commission; or (2) grieve the matter under the terms of this negotiated Agreement beginning at the last step of the grievance procedure to the State Director or Designee. If the State Director was the decision maker of the action the employee can grieve to the State Director or the Union can invoke arbitration. The choice of forum is irrevocable. An employee shall be deemed to have exercised his or her option at such time as the employee timely files under the statutory procedure or the negotiated grievance procedure, whichever occurs first. The Union reserves the right to invoke arbitration, and if so, it must be invoked no later than 21 calendar days following receipt of the final decision as stated in Article 8.1A.

F. Fourteen (14) calendar days to respond orally and/or in writing and to furnish affidavits and other documentary evidence in support of their response. The deciding official may extend the reply period if he/she determines that good cause exists for an extension based on extenuating circumstances. The Employer will designate an official to hear the Employee's oral answer who has authority to make a final decision on the proposed adverse action.

## 26.6 NOTICE AND INVESTIGATIVE LEAVE

- A. Pursuant to 5 U.S.C. § 6329(b), the Employer may place an Employee on Investigative and/or Notice Leave when the Employer determines that an Employee must be removed from the workplace while under investigation or during a notice period (i.e., the period after the Employee has received a proposed notice of disciplinary/adverse action before a final decision is made and takes effect). These two types of leave may be used when the Employer has determined that the Employee's continued presence may:
1. Pose a threat to the Employee or others;
  2. Result in the destruction of evidence relevant to an investigation;
  3. Result in loss of damage to Government property; or
  4. Otherwise jeopardize legitimate Government interests.
- B. Before using either Investigative or Notice leave, the Employer will consider options to avoid or minimize the use of paid leave, such as assigning the Employee to duties in which the Employee no longer poses a threat; allowing the Employee to take another form of eligible leave.
- C. The use of Notice and Investigative Leave is subject to the time limitations and special approvals for extensions pursuant to 5 U.S.C. § 6329(b).

## ARTICLE 27 – REASSIGNMENTS

### GENERAL:

The Agency shall reassign employees in accordance with applicable laws, rules, regulations, policies, procedures, and practices, as amended. The Agency will provide the Union notice of any employee reassignments as soon as practicable.

- A. Whenever any employee submits a written request for a voluntary reassignment, the Agency will consider the request in light of the needs of the Agency. The Agency will not pay relocation expenses that result from employee initiated voluntary reassignments.
- B. Whenever a reassignment results from the Agency solicitation of volunteer(s) (i.e. statement of interest), the Agency will not pay relocation expenses.
- C. Whenever the reassignment is a directed reassignment (is not voluntary and is within the commuting area (49 miles or less)) relocation expenses will not be paid.
- D. Whenever the reassignment is a directed reassignment (is not voluntary and is outside the commuting area (50 miles or more)) relocation expenses required by regulation will be paid.

## ARTICLE 28 – CONTRACTING OUT BARGAINING UNIT WORK A-76

28.1 NOTIFICATION TO THE UNION: When the Agency anticipates contracting out work presently being performed by bargaining unit employees and that doing so would result in a reduction-in-force or in the demotion of any bargaining unit employee, it will notify the Union at least 60 days in advance or as soon as practicable. The notice will identify in general terms the employees who may be affected. Time frames hereby established may be extended by mutual consent. Following such notice, upon request from the Union, the Agency will meet with the Union to discuss the information contained in the notice.

28.2 MANAGEMENT DECISIONS: Any Agency decision to possibly contract out work presently being performed by bargaining unit employees will be made in accordance with current rules, regulations, policies, and procedure as amended.

28.3 STATEMENT OF WORK: The Agency will provide the Union with a copy of any Statement of Work which has been developed for the proposed contracting out, and which deals with work currently performed by bargaining unit employees. The Union will be given seven (7) calendar days to comment regarding the Statement of Work. Time frames hereby established may be extended by mutual consent.

28.4 IMPACT AND IMPLEMENTATION: The Agency agrees that prior to implementing a decision to contract out, the Union will be given the opportunity to timely negotiate regarding the impact and procedures for implementing such decision. Management and Union officials will meet for no more than five (5) calendar days to resolve any differences and reach agreement. Time frames hereby established may be extended by mutual consent, but the Parties want to meet to expedite the process.

28.5 ACCESS TO REGULATIONS: The Agency agrees to provide the Union access to all regulations maintained on-site that are relevant to contracting out.

28.6 ADVERSE EFFECTS ON BARGAINING UNIT EMPLOYEES: If bargaining unit employees are adversely affected (RIF or demotion) by the decision to contract out work presently being performed by bargaining unit employees, the Agency will proceed in accordance with Article 24, “Reduction-in-Force and Transfer of Function” of this Agreement.

28.7 PLACEMENT ASSISTANCE: The Agency agrees to assist in locating suitable employment for bargaining unit employees who are displaced as a result of contracting out, including: giving consideration for vacant positions for which they are qualified within NRCS, Puerto Rico. in accordance with Agency policies and procedures; and submitting their names to the Career Transition Assistance Plan (CTAP) and the Interagency Career Transition Assistance Plan (ICTAP) programs, as applicable.

## ARTICLE 29 – EQUAL EMPLOYMENT OPPORTUNITY

### GENERAL:

Equal Employment Opportunity (EEO) will be applied in accordance with federal regulations, laws, rules, policies, procedures, and practices, as amended, and this Agreement.

29.1 COMPLAINTS: An employee may file an EEO complaint using the Agency EEO complaint procedure or the negotiated grievance procedure (see Article 7, “Grievance Procedure”, of this Agreement) but not both.

29.2 DUTY STATUS: Union Representatives participating in discussions of informal EEO complaints under this article will be on official time as outlined in Article 9, “Union Representation and Official Time”, of this Agreement.

## ARTICLE 30 – HEALTH AND SAFETY

### GENERAL:

The Agency shall promote health and safety in the workplace and for employees in accordance with applicable laws, rules, regulations, policies, procedures, and practices as amended. The Agency and the Union have a common interest in promoting safe working habits and safe conditions. The Agency has an obligation to provide safe working conditions. It is recognized that each employee has the primary responsibility for their own safety and as such, is further responsible for promptly bringing to the attention of their supervisor any unsafe working conditions. The Agency will investigate and if warranted, promptly take appropriate action to correct the unsafe condition.

30.1 FIRST AID: Where full health facilities are not available on the premise, the Agency agrees to provide first aid kits(s) and designate a position in each office to maintain the kit(s).

30.2 GOVERNMENT VEHICLES: An employee will not be required to operate a Government motor vehicle known to be unsafe as determined by the Agency.

The Agency will authorize the ordering of the following safety equipment for each GSA vehicle:

1. First aid kit and flashlight.
2. Fire extinguisher.

In addition, if individual employees, based upon their travel patterns, feel other devices or items are necessary they may request such items through normal supply channels.

30.2 INJURY REPORTING: All on-the-job injuries, whether or not such injuries at the time are considered to be disabling, will be reported immediately to the supervisor and Human Resources.

30.3 PERSONAL SAFETY: An employee may decline to perform his or her assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of bodily harm or a life-threatening situation coupled with a reasonable belief that there is insufficient time to obtain guidance. The employee will promptly bring to the attention of their supervisor any unsafe working condition. The Agency will investigate, and if warranted, promptly take action to correct the unsafe condition.

Employees have the primary responsibility for their personal safety. The Agency agrees it will not assign and employees may decline to work where there is imminent risk of serious injury or a life-threatening situation.

## ARTICLE 31- SMOKING POLICY

### GENERAL:

The Agency shall administer a smoking policy in accordance with applicable laws, rules, regulations, policies, procedures, and practices including most current Departmental Regulation - “USDA Smoking Policy” as amended, and this Agreement.

This Article covers cigarettes, e-cigarettes (vaping), smokeless tobacco, pipe, cigars, or any other type of smoking instrument. Smoking or ingesting marijuana in any form is against Federal Law.

31.1 MARIJUANA: Federal law on marijuana remains unchanged. Marijuana is categorized as a controlled substance under Schedule I of the Controlled Substance Act. Marijuana use and/or possession is illegal, even if an individual has no intent to manufacture, distribute, or dispense marijuana. In addition, Executive Order 12564, Drug-Free Federal Workplace, dated September 15, 1986, mandates that (a) Federal employees are required to refrain from the use of illegal drugs; (b) the use of illegal drugs by Federal employees, whether on or off duty, is contrary to the efficiency of the service; and (c) persons who use illegal drugs are not suitable for Federal employment.

***In the event Marijuana becomes legal by Federal Law, and Executive Order 12564 is rescinded section 31.1 of this article will be voided.***

### 31.2 SMOKING BREAKS:

A. Employees may smoke before work, after work, while on their official breaks or during their scheduled lunch periods only. Refer to Article 14, “: Lunch and Break Periods” of this Agreement. The Agency may take disciplinary action against any employee smoking during working hours other than during their official breaks and scheduled lunch period.

B. An employee’s break may not exceed fifteen (15) minutes in duration unless they request annual leave, compensatory time, credit hours, or leave without pay (LWOP) or request to extend their workday to cover a longer break period.

C. An employee may not divide their fifteen (15) minute breaks into breaks of smaller increments.

## ARTICLE 32 – EMPLOYEE ATTIRE

### GENERAL:

Nothing in this Article precludes an employee from dressing in a more professional manner than this Article requires. While on duty, employees shall dress in a neat and orderly manner, consistent with the office and administrative environment in which they work and that is conducive to safety. Employees' attire shall be clean and in good repair.

32.1 ATTIRE: On a daily basis, employees may dress in business casual attire or casual attire as appropriate.

- A. Appropriate business casual attire may include, but is not limited to: Slacks or khakis, trouser-like jeans, dress shirt or blouse, open-collar or polo shirt, optional tie or sport coat, dress or skirt, blazer, knit shirt or sweater, and loafers or dress shoes/sandals.
- B. Appropriate casual attire may include, but is not limited to: Jeans (tattered, ripped or cut-offs must not be worn), leggings or other casual pants, casual shirts and casual shoes including tennis shoes and sandals are permitted provided they are in good condition and appropriate for the work setting.
- C. Employees shall not wear athletic clothing, exercise/workout/athletic wear, shorts or flip-flops unless authorized for specific office events. Employees shall not wear midriffs, pajamas, tee-shirts (with anything political, promotional, graphic, or vulgar), tube tops.

32.2 BUSINESS ATTIRE: Examples of when business attire is may be required to include, but are not limited to (Dress for your audience):

1. Attending meetings where non-NRCS, Puerto Rico individuals are in attendance;
2. Attending conferences, seminars, or workshops. If a conference, seminar, or workshop, lists attire requirement, then the employee shall follow the attire requirements listed in the registration;
3. Making formal presentations;
4. Attending formal classroom training;
5. Otherwise representing the Agency in an official capacity;
6. Visitors are expected. The Agency will provide advance notice, if practicable, when such visitations require business attire.



## ARTICLE 33 – UNION-EMPLOYER MEETINGS

### GENERAL

The Employer and Union representatives will meet periodically to promote two-way communication and to help identify problems and propose solutions to better serve the public and the Agency's mission.

### 33.1 MEETINGS

These meetings, which will be attended by the Employer and not more than two Union representatives, will be held at least quarterly, or more frequently by mutual agreement, at a mutually convenient time. The purpose of these meetings is to discuss broad matters of mutual concern, which may include, but need not be limited to: the identification and/or correction of conditions causing grievances and misunderstandings; improving communications between employees and supervisors; maintaining employee productivity and morale; training and career development opportunities; the improvement of working conditions; potential ULPs; agency-wide workplace harassment and bullying trends.

The items to be discuss can be sent in form of an email or agenda at least 48 hours prior to the meeting or mutually agreed upon meeting date schedule.

### 33.2 EXCLUDED TOPICS

These Union-Employer meetings will not consider individual grievances, complaints, or disputes.

### 33.3 OFFICIAL TIME

The Union shall be granted Official Time for these meetings, in accordance with the provisions of 5 U.S.C. 7131.

OFFICIAL SIGNATURES.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE ENTERED INTO THIS AGREEMENT ON THIS 3rd DAY OF MARCH OF 2022.

COLLECTIVE BARGAINING AGREEMENT

between

UNITED STATES DEPARTMENT OF AGRICULTURE (USDA), NATURAL RESOURCES  
CONSERVATION SERVICE (NRCS), PUERTO RICO



and the

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES (AFGE), LOCAL 0055



LUIS CRUZ-  
ARROYO

*[Signature]*  
Digitally signed by LUIS CRUZ-  
ARROYO  
Date: 2022.02.28 09:19:56 -04'00'

LUIS CRUZ ARROYO

NRCS Caribbean Area Director

Date

MARELITA SOSA *[Signature]*  
Digitally signed by MARELITA SOSA  
Date: 2022.03.03 10:29:42 -04'00'

MARELITA SOSA SEGARRA

AFGE 0055 President

Date

JOHN HIPPE *[Signature]*  
Digitally signed by JOHN HIPPE  
Date: 2022.03.03 09:35:31 -07'00'

JOHN HIPPE

NRCS Negotiator

Date

YADIRA FELICIANO OCANA

AFGE 0055 Vice President

Date

FRANK VELAZQUEZ *[Signature]*  
Digitally signed by FRANK  
VELAZQUEZ  
Date: 2022.02.28 14:01:55 -04'00'

FRANK R. VELAZQUEZ ACEVEDO

NRCS Negotiator

Date

YADIRA FELICIANO *[Signature]*  
Digitally signed by YADIRA  
FELICIANO  
Date: 2022.03.01 07:59:22 -04'00'

*Daniel Bethea*

02/24.2022

DANIEL P. BETHEA

AFGE National Representative 5<sup>th</sup> District Date

